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DATE: November 12, 2008

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FOR: David Bucci, Petition Examiner

COMPANY: United States Patent and Trademark Office

FAX NO.: 571-273-8300

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FROM: Michael L. Smith

Please let us know by phone or fax if you do not receive any of these pages.

COMMENTS:

Re: U.S. Patent Application No. 10/673,296

NOTICE

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VIA FACSIMILE: 571-273-8300

Mr. David Bucci
Petitions Examiner
Office of Petitions
P.O. Box 1450
Alexandria, Virginia 22314

Re: U.S. Patent Application No.: 10/673,296
Mittlestein, et al.
In the name of Bausch & Lomb Incorporated
Our Ref: P03115

Dear Mr. Bucci:

This is in response to the Decision Refusing Status Under 37 CFR 1.47(a) mailed on 1 October 2008 by the Office of Petitions concerning application 10/673,296. I believe a failure in the Patent Office's procedures has occurred and resulted in the premature issuance of application 10/673,296 as US Patent 7,445,436. Somehow, the application continued to issuance even though the Office of Petitions was working with me to obtain a properly signed declaration from one joint inventor.

A petition under 1.47(a) was dismissed and a two month period, starting from the 1 October 2008 mailing date, was set to correct a deficiency set forth in the Decision. I set about curing the deficiency by sending, via FedEx, a new declaration to joint inventor Robert Schauer, on 24 October 2008 listing all the inventors. The signed declaration was received back from Mr. Schauer on 10 November 2008, and is attached to this letter.

I was preparing to forward the signed declaration to the Office of Petitions, when I became aware that US Patent 7,445,436 had issued before a proper declaration was filed.

Harness, Dickey & Pierce, P.L.C. Attorneys and Counselors

Metropolitan: Detroit, MI St. Louis, MO Washington, DC

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Phone 314.726.7500

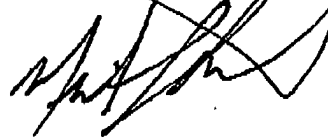
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-2-

I am requesting that the properly signed declaration attached to this letter be entered into the file of application 10/673,296 because, through no fault of mine or the applicant, the patent issued before a properly signed declaration was filed.

Respectfully submitted,



Michael L. Smith
Reg. No. 35,685

MLS:csy

Attachment – Declaration and Power of Attorney

cc: John J. Doll, Commissioner of Patents
John J. Love, Deputy Commissioner for Patent Examination Policy
Peter Bertheaud, Examiner

PATENT

Attorney's Docket No. P03115
(6639-000035/US)

COMBINED DECLARATION AND POWER OF ATTORNEY

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As a below-named inventor, I hereby declare that:

TYPE OF DECLARATION

This declaration is of the following type:

- provisional
- ☒ original
- design
- divisional
- continuation
- continuation-in-part (CIP)

INVENTORSHIP IDENTIFICATION

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

A PERISTALTIC PUMP WITH A MOVEABLE PUMP HEAD

which was filed on September 29, 2003, as United States Patent Application No. 10/673,296

ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose all information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, §1.56(a).

- In compliance with this duty, there is attached an information disclosure statement.
37 CFR 1.97.

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PRIORITY CLAIM (35 U.S.C. §119)

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the same application(s) of which priority is claimed.

- x no such applications have been filed.
such applications have been filed as follows:

PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN 12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO THIS APPLICATION AND ANY PRIORITY CLAIMS UNDER 35 U.S.C. §119

Country	Application Number	Date of Filing (day, month, year)

CLAIM FOR BENEFIT OF EARLIER U.S./PCT APPLICATION(S) UNDER 35 U.S.C. 120

I hereby claim the benefit under Title 35, United States Code, §119 and/or §120 of any United States application(s) that is/are listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application(s) and the national filing date of this application.

		Status (check one)	
U.S. Applications	U.S. Filing Date	Patented	Pending
1. 0/			
2. 0/			

I hereby claim the benefit under Title 35, United States Code §119(e) of any United States provisional application(s) listed below.

U.S. Applications	U.S. Filing Date
1.	
2.	

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POWER OF ATTORNEY

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

Michael L. Smith, Reg. No. 35,685
CUSTOMER NUMBER 23702

Send correspondence to:

Michael L. Smith
Bausch & Lomb Incorporated
One Bausch & Lomb Place
Rochester, NY 14604

Direct telephone calls to:

Michael L. Smith
(314) 446-7646

DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issued thereon.

SIGNATURE(S)

Full name of first inventor: Michael Mittelstein

Inventor's signature _____

Date _____

Country of Citizenship: GERMANY

Residence: 29412 Clipperway
Laguna Niguel, California 92677
US

Post Office Address Same as above

Full name of second inventor: John T. Sorensen

Inventor's signature _____

Date _____

Country of Citizenship: US

Residence: 19 Barnstable Way
Ladera Ranch, California 92694
US

Post Office Address Same as above

Full name of third inventor: Soheila Mirhashemi

Inventor's signature _____

Date _____

Country of Citizenship: US

Residence: 29412 Clipperway
Laguna Niguel, California 92677
US

Post Office Address Same as above

Full name of fourth inventor: James Gerg

Inventor's signature _____

Date _____

Country of Citizenship: US

Residence: 24725 Woodhill Lane
Lake Forest, California 92630
US

Post Office Address Same as above

Full name of fifth inventor: Robert Schauer

Inventor's signature Robert Schauer

Date 10/30/2008

Country of Citizenship: US

Residence: 15831 Bristol Circle
Westminster, California 92683
US

Post Office Address Same as above